Supreme Court, U.S.
FILED
SEP 21 1995
CLERK

(3)

No. 94-1931

IN THE

Supreme Court of the United States

OCTOBER TERM, 1995

JON E. EDMOND, PETITIONER

v.

THE UNITED STATES OF AMERICA, RESPONDENT

Petition for a Writ of Certiorari to the United States Court of Appeals for the Armed Forces

SUPPLEMENTAL BRIEF OF PETITIONER

Allen Lotz
Lieutenant Commander, U.S. Coast Guard
Commandant (G-L-5)
U.S. Coast Guard
2100 2nd Street, S.W.
Washington, DC 20593-0001
(202) 267-0115
Attorney for Petitioner

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1995

No. 94–1931

JON E. EDMOND, PETITIONER

v.

THE UNITED STATES OF AMERICA, RESPONDENT

Petition for a Writ of Certiorari to the United States Court of Appeals for the Armed Forces

---

SUPPLEMENTAL BRIEF OF PETITIONER

Pursuant to Rule 15.7 of the Rules of this Court, Petitioner files this supplemental brief for the information and consideration of the Court in determining the action to be taken on the pending Petition for a Writ of Certiorari in this case.

The Petition for a Writ of Certiorari was filed in this case on May 25, 1995. The brief in opposition was filed on July 28, 1995. In the interim, on June 12, 1995, this Court issued its decision in *Ryder v. United States*, 115 S. Ct. 2031 (1995).

Ryder was remanded to the U.S. Court of Appeals for the Armed Forces for further proceedings. *Id.* at 2038. The purpose of the remand was to ensure that the petitioner there would receive a hearing before a properly appointed panel of the Coast Guard Court of Criminal Appeals.[1] *Id.* The petition in this case questions whether all the judges of that court are now properly appointed.

On July 31, 1995, the U.S. Court of Appeals for the Armed Forces issued an order in *Ryder* for the United States to show cause, if any it could, "whether the Secretary of Transportation has the statutory authority to appoint judges of the United States Coast Guard Court of Criminal Appeals." *United States v. Ryder*, Dkt. No. 68449/CG (U.S.C.A.A.F. July 31, 1995).[2]

The Court of Appeals for the Armed Forces is also considering this same issue pursuant to a granted petition for review in the case of *United States v. Leonard*, Dkt. No. 95-0702/CG, as noted in Respondent's brief in opposition to the petition for a writ of certiorari in this case. Respondent's Brief in Opposition at 12-13 n.10.

Thus the Court of Appeals for the Armed Forces will be considering and deciding this issue after full briefing and argument for the first time in *Ryder* and *Leonard*. In the interest of judicial economy, this Court should grant the petition for a writ of certiorari, summarily vacate the judgment below, and immediately remand the case to the Court of Appeals for the Armed Forces for consideration of this issue in conjunction with *Ryder* and *Leonard*.

---

[1] Formerly the Coast Guard Court of Military Review.

[2] A copy of this order is included as an Appendix to this supplemental brief.

CONCLUSION

For the reasons stated, petitioner prays that this Court grant the petition for a writ of certiorari, summarily vacate the judgement below, and remand the case for further proceedings.

Respectfully submitted,

Allen Lotz
Lieutenant Commander, U.S. Coast Guard
Commandant (G-L-5)
U.S. Coast Guard
2100 2nd Street, S.W.
Washington, DC 20593-0001
(202) 267-0115
Attorney for Petitioner

APPENDIX

United States Court of Appeals for the Armed Forces

UNITED STATES, Appellee v. James D. RYDER (216-72-3185), Appellant	)	USCA Dkt. No. 68449/CG CMR Dkt. No. 947 ORDER

On consideration of the above-entitled case in light of Ryder v. United States, 115 S.Ct. 2031 (1995), we note that the Secretary of Transportation has appointed the current judges of the United States Coast Guard Court of Criminal Appeals, see 37 MJ at 294, 300, although there is no specific provision in Article 66, Uniform Code of Military Justice, 10 USC § 866, for appointment of those judges by the Secretary. We deem it necessary to determine whether the Court of Criminal Appeals is properly constituted before the record of trial is remanded for further consideration in accordance with the decision of the Supreme Court in this case. Cf. order granting review in United States v. Leonard, No. 95-0702/CG (Daily Journal July 14, 1995). Accordingly, it is by the Court this 31st day of July, 1995,

ORDERED:

That within 30 days from the date of this order the United States show cause, if any it can, whether the Secretary of Transportation has the statutory authority to appoint judges of the United States Coast Guard Court of Criminal Appeals. Appellant shall file an answer within 20 days after service of the response to this Show Cause Order.

For the Court,

/s/ John A. Cutts, III
Deputy Clerk of the Court

Sullivan, Chief Judge (dissenting): I respectfully dissent. I would send this case back to the United States Coast Guard Court of Criminal Appeals for their current view of the case in light of Ryder v. United States, 115 S.Ct. 2031 (1995).

cc: General Counsel, Department of Transportation
Appellate Defense Counsel (LOTZ)
Appellate Government Counsel (WALKER)